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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1960.

No. 201.

PENNSYLVANIA TURNPIKE COMMISSION,
Petitioner,

v.

EDGAR A. McGINNES, District Director of Internal Revenue, Philadelphia,
and
Respondent,

MANU-MINE RESEARCH & DEVELOPMENT COMPANY,
and
Respondent,

SEABOARD SURETY COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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QUESTIONS PRESENTED FOR REVIEW.

1. Does the District Court have jurisdiction of an action removed from a State Court, if the State Court did not have jurisdiction over the subject matter of the action?

2. Does a State Court have jurisdiction of an action to enjoin a District Director of Internal Revenue from paying a tax refund to a taxpayer, and to direct the payment of the tax refund to a Third Party who claims to be the equitable owner of the proceeds of the refund?

3. Is the United States an indispensable party to such an action?

ARGUMENT.

Petitioner claims that Respondent Manu-Mine Research and Development Co. ("Manu-Mine") obtained money from it by fraud, used the money to pay Manu-Mine's federal income taxes and is now seeking a refund of those tax moneys which it has assigned to Respondent Seaboard Surety Company ("Seaboard"). Petitioner says that it, and not Manu-Mine or Seaboard, is entitled to the tax refund. The substantive questions suggested by this brief recital of the claim are all questions of state law involving only Petitioner, Manu-Mine and Seaboard. Thus, when Petitioner asserted these claims in an action commenced in the district court, the action was dismissed for lack of federal jurisdiction; *Pennsylvania Turnpike Commission v. McGinnes, et al.*, 169 F. Supp. 580 (E. D. Pa. 1958), *aff'd* 268 F. 2d 65 (3rd Cir., 1959), *cert. den.*, 361 U. S. 829 (1959).

Petitioner started this second suit on the same claim in the Common Pleas Court of Philadelphia County and the District Director removed it to the district court. The Complaint asks (a) for an injunction against the District Director enjoining him from paying the tax refund to Manu-Mine, (b) for an injunction against Manu-Mine enjoining it from attempting to cause the payment to be made to Seaboard, the assignee, and (c) for an order directing the District Director to pay the refund to the Petitioner.

It is the position of these Respondents, sustained by the Courts below, that the state court had no jurisdiction over the action against the District Director and that the district court therefore acquired no jurisdiction on removal. The following propositions, which support this conclusion, have all been upheld by decisions of this Court, and no new or unsettled question of federal law is presented by the Petition warranting review by this Court:

1. If a state court lacks jurisdiction of the subject matter or of the parties, the district court acquires none on removal: *Lambert Run Coal Co. v. Baltimore and Ohio Railroad Co.*, 258 U. S. 377, 66 L. Ed. 671 (1922).

2. Since Petitioner is in no way involved in the tax refund, it is really seeking to attach a debt due by the United States to Manu-Mine, and this cannot be done: *Buchanan v. Alexander*, 4 How. 20 (1846).

3. Actions to enjoin a federal officer may not be maintained except where: (1) the statute under which he purports to act is unconstitutional; or (2) where the officer is acting *ultra vires* his authority; *Larson v. Domestic and Foreign Corp.*, 337 U. S. 682, 93 L. Ed. 1628 (1948). Neither of these situations is presented by the present case. Petitioner relies on *Brooks v. Dewar*, 313 U. S. 354, 85 L. Ed. 1399 (1941), but in that case this Court based its decision on a failure of the complaint to state a cause of action and expressly declined to resolve the jurisdictional question "touching issues of so grave consequence". The *Larson* case, *supra*, did resolve the conflicts in this area and established the foregoing two situations as the only ones in which an injunctive action may be maintained against a federal official purporting to act in the performance of his official duties.

4. Petitioner seeks a direction to the District Director to pay the refund to it. This would constitute relief in the nature of mandamus against a federal official, and a state court has no such jurisdiction: *McClung v. Silliman*, 6 Wheat. 598, 5 L. Ed. 340 (1821).

5. The state court had no power to interfere with McGinnes in the performance of his official duties; *U. S. v. Tarble*, 13 Wall. 397, 20 L. Ed. 597 (1872); and *Keely v. Sanders*, 99 U. S. 441 (1879).

6. The United States is an indispensable party because the action is one to reach money owed by the United States and because its liability cannot be tried behind its back; *Mine Safety Appliance Co. v. Forrestal*, 326 U. S. 371 (1945). Further, any injunction against payment of the refund would result in the imposition on the United States of an obligation to pay interest under Section 6611 of the Internal Revenue Code.

Petitioner relies on *Houston v. Ormes*, 252 U. S. 469, 64 L. Ed. 667 (1920). That was an action originated in the federal court for the District of Columbia by an attorney who sought to establish an equitable lien for a fee on a fund created by Congress to pay the client's claim, and to require the Secretary of the Treasury to pay the fund to a receiver for the client. This was a *federal* court exercising mandamus powers over a federal official who had only a ministerial act to perform. That federal court is the only *federal* court which possesses those general equitable powers. There is no suggestion in the case that a *state* court has any such power *over a federal official*, and the foregoing principles and decisions indicate clearly that it does not.

Since this action involves no unsettled questions of law, and was properly decided below in consonance with the proper purview of federal and state sovereignties, the Petition for Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent, Seaboard Surety Company.